IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 134 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONEROF INCOME-TAX - Applicant(s)

Versus

HARI ENTERPRISES - Respondent(s)

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Appearance :
MRS M.M.BHATT FOR MR MANISH R BHATT for Applicant
NOTICE UNSERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “A” has referred the following question under Section 256(1) of the Income Tax Act,

1961 (the Act) at the instance of the Commissioner of Income Tax.

> “Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in deleting the addition of Rs.1,06,383/- made by the ITO u/s 40A(3) of the Income Tax Act?”

2. Though the respondent assessee is shown to have not been served, the reference is taken up for hearing and final disposal in light of the fact that the Court does not intend to disturb the impugned order of Tribunal considering the facts and for the reasons stated hereinafter.

3. The assessment year is 1978-79 and the relevant accounting period is year ended on 30th June 1977. The assessee, a registered firm, carries on business of manufacturing H.D. Polythene bags and purchases goods from M/s Hoechst Dyes & Chemicals Ltd. During the year under

consideration, a total sum of Rs.1,06,383/- was paid by the assessee to M/s Hoechst Dyes & Chemicals Ltd. in cash, each payment exceeding Rs.2,500/-. The assessing officer, after negativing the explanation and claim of the assessee, disallowed the said sum under Section 40A(3) of the Act vide his order dated 12/8/1981. The said order came to be confirmed by CIT (Appeals) by order dated 2nd August 1985. The assessee carried the matter in appeal before the Tribunal and succeeded. Hence, the reference by the revenue.

4. Heard Mrs.M.M.Bhatt, the learned standing counsel appearing on behalf of the applicant revenue. She urged that the Tribunal had erred in reversing the order of Commissioner (Appeals), especially when the assessee had failed to adduce evidence when called upon to do so by the assessing officer. She, therefore, submitted that the question be

answered in favour of the revenue.

5.As can be seen from the impugned order of Tribunal dated 21/12/1987, it has recorded the following findings of fact, after appreciating the evidence on record :

> “On the material available on record, it cannot be disputed the existence and the genuineness of M/s Hoechst Dyes and Chemicals Ltd. As there was some misunderstanding between the assessee and the said company and as some of the cheques issued by the assessee were bounced back, the said party had insisted on receiving the money in cash for the raw-materials supplied by it to the assessee.”

6.The Tribunal has further found that, in the earlier years, similar invocation of section 40A(3) of the Act was carried in appeal and the assessee had succeeded before the first

appellate authority. The said appellate orders had become final. It is further recorded by the Tribunal that the observation made by CIT (Appeals) that, in earlier years, no proper verification was carried out, is irrelevant and besides the point. After recording the aforesaid findings, the Tribunal has noted that provision of Section 40A(3) of the Act are not meant for garnering revenue and the purpose and object of the said provision has been elaborately discussed in the case of Hasanand Pinjomal v. Commissioner of Income Tax, Gujarat, [1978] 112 ITR 134, a decision of this Court.

7. In the aforesaid decision in the case of Hansanand Pinjomal, this Court has stated that Section 40A(3) of the Act was intended to serve the objective of checking tax evasion and to ensure that payments exceeding specified limit are made by crossed bank cheques or drafts so

as to enable the revenue to ascertain, when deduction is claimed, whether the payment was genuine and made out of income from disclosed source. Explaining the requirement of Rule 6DD(j) of the Income Tax Rules, 1962 (the Rules), it is stated that the concept of practicability provided in the said rule has to be judged from the point of view of the businessmen and not of the revenue. That merely because the payment is made otherwise than by crossed cheques or drafts, and in certain circumstances, voluntarily, that by itself is not sufficient to uphold the disallowance. As per second proviso to Section 40A(3) of the Act, one of the relevant factors is business expediency which has to be considered from the angle of the businessmen and not the revenue.

8. Applying the aforesaid tests to the facts of the case and the findings recorded by the

Tribunal, it is not possible to state that the impugned order of Tribunal suffers from any infirmity, especially when one takes into consideration the object with which the provision has been enacted. The applicant revenue has not been able to bring on record any material to dislodge the finding that there is no dispute as to genuineness of the transaction or existence of the payee i.e. M/s Hoechst Dyes and Chemicals Ltd. Nor is there any material available on record to hold that the assessee was not compelled to make payment in cash for the raw materials purchased by the assessee in light of the fact that the cheques issued by the assessee were dishonoured by the bank.

9. In the circumstances, the Tribunal was justified in holding that the case of the assessee was covered by the exception provided by Rule 6DD(j) of the Rules and provisions of

section 40A(3) of the Act, could not be invoked for making addition of Rs.1,06,383/- Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

10.The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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